

BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI

INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS, LOCAL 2,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. R 97-018
	)	
CITY OF HAZELWOOD,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of International Union of Operating Engineers, Local 2 (hereinafter referred to as the Union) to represent certain employees of the City of Hazelwood (hereinafter referred to as the City). The Union seeks to represent a bargaining unit of all employees of the City's Maintenance Division excluding office clerical employees, professional employees and supervisors. A hearing on the matter was held on Feb. 21, 1997 in Hazelwood, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member LeRoy Kraemer and employer member Lois VanderWaerdt. At the hearing the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets for the following Findings of Fact, Conclusions of Law, Order, and Direction of Election.

**FINDINGS OF FACT**

As part of its governmental functions, the City of Hazelwood operates a Public Works Department. That department has two divisions: Maintenance and Parks. The Maintenance Division is involved here. The employees in that division maintain the City's streets, buildings and parks, and service and repair the City's police cars and other city vehicles. The division's organizational structure is as follows. The division is headed by Superintendent Paul Williams. He reports to the director of the Public Works Department who is one of the City's three department heads. Directly subordinate to Williams in the division's organizational structure are a secretary, a stock clerk/custodian, and two mechanics; all report directly to Williams. The remainder of the employees in the Maintenance Division are maintenance workers and crew leaders. There are 14 maintenance workers and two crew leaders. The maintenance workers report to the crew leaders who, in turn, report to Williams.

At issue here is the status of the two crew leaders: Tom Shucart and Paul Moore. Before assuming their present positions, Shucart and Moore were maintenance workers. Each has been in their current position for at least ten years. They are among the division's most senior employees. Two months prior to the instant hearing, their title was changed from leadman to crew leader.

All Maintenance Division employees either work at or are based at the City's maintenance building. That building houses three mechanics' bays for the service and repair of vehicles, other bays for equipment storage, the Superintendent's office, and a lunchroom. The secretary, the stock clerk/custodian and the two mechanics perform their duties at the maintenance building. The remainder of the division's employees (namely maintenance workers and crew leaders) work in the field.

Each crew leader normally oversees a crew of seven maintenance workers. Shucart's crew can double in size during the months of April through November because the City hires

seasonal employees and adds them to his crew. Moore's crew usually does not vary in size. Shucart's crew mainly cuts grass. Moore's crew primarily does construction work such as installing playground equipment and building pavilions, basketball courts, and parking lots.

At the start of each workday, the crew leaders learn from Williams what jobs are to be done that day by their respective crews through a formalized work order system. The crew leaders are given a description of each job to be performed, its location, who has requested the job, who has authorized it, the source of the order, and the relative priority in which the job is to be performed. Williams determines the priority of these jobs. In addition to these jobs, other work such as cutting grass is routinely performed. The crew leaders then assign this work to their individual crew members. In assigning work they consider the nature of the work to be done, the individual employee's skills, and the employee's ability to perform various tasks. The crew leaders make this assignment of work on their own without consulting with Williams regarding same.

After these work assignments are made, the maintenance workers drive to the job site and commence working. Moore's crew usually works together as one crew on a single job while Shucart's crew does not. Shucart's crew is usually divided into crews of two, three, or four members who work on different and smaller jobs. While working in the field, maintenance workers operate the following pieces of equipment: graders, loaders, sweepers, tractors, backhoes, mowers, post-hole diggers, and trucks. They also use a wide array of hand tools including drills, picks, wheelbarrows, wrenches, and shovels.

During the course of the day, the crew leaders maintain radio contact with or visit the various job sites where their crew members are working. They do this to check on the status of the jobs and ensure that the work is being performed correctly. While they are at the work site, each crew leader assists in performing the work being done. Thus, the crew leaders operate all the equipment and use the same tools as the maintenance employees do. The amount of time

which the crew leaders spend doing hands-on work varies depending on the needs of the particular workday, the workers available, the type of work being performed, and the amount of time spent traveling. It also varies from crew leader to crew leader. Moore usually spends 85-90% of his time in the field doing hands-on work with tools, equipment and machinery. Shucart spends as little as 20% and as much as 100% of his time doing this type of work. Moore spends more time doing hands-on work than Shucart does because Shucart has to travel from job to job more frequently than Moore.

In addition to operating equipment and checking on the work performed by the maintenance workers, the crew leaders also have the following job responsibilities: they train new employees in the operation of equipment, they check on the work performed by outside contractors who are doing work for the City, and they complete weekly reports which track and record the hours worked by their crew members.

A maintenance worker who wants to take vacation or a personal day usually makes the request to their crew leader. The crew leader then discusses it with Williams and a mutual decision is made concerning same. On occasion, a maintenance worker makes the request directly to Williams. When this happens, Williams consults with the crew leader and they mutually decide whether to grant the request.

The maintenance workers are evaluated every year for their first five or six years of employment. After that, they are evaluated every other year until they reach the top of their pay range at which point they are not evaluated anymore. These evaluations are completed by the crew leaders. When employees are evaluated this is the only evaluation they receive. The evaluation process works as follows: the crew leader fills out a preprinted form by rating the employee's job performance in twelve areas using a scale which ranges from 1 (the lowest rating) to 5 (the highest rating). After a numerical rating is assigned to each of the twelve areas, a total

score is figured along with an average score. The evaluation form also contains a blank space in each of the twelve areas wherein the rater can make written comments. The record does not contain any completed evaluations so it is unknown if the evaluations commonly contain written comments. The crew leader fills out this evaluation form without first talking with Williams. When Shucart and Moore became crew leaders, they were told to fill out the evaluation in pencil so that it could be changed. After the crew leader has filled out the evaluation form, he sits down with the employee and goes over the completed evaluation with them. The crew leader and the employee then sign the evaluation form. The completed evaluation form then goes to Williams for his review. If Williams does not like something on the evaluation he can change it. On some occasions the evaluations have been completed by Williams; not a crew leader. The evaluation is then sent to the director of the Public Works Department and the city manager, who also review it and sign it. When a maintenance worker I has been with the City for about three years, the crew leader recommends on the evaluation form that the employee's status be changed from maintenance worker I to maintenance worker II. The crew leader's initial recommendation is then reviewed by Williams who makes the final decision concerning same. If an employee's status is changed in this fashion, they move into a higher pay grade.

In the last two years, the city manager's office has done all the work in hiring Maintenance Division employees. Specifically, it has advertised for candidates, screened the applications received and decided who to interview, conducted the interviews with the applicants and decided who to hire. Five new maintenance workers have been hired in the last two years and neither crew leader had any role in interviewing or hiring them. Prior to that though, crew lead Shucart sat on interview panels along with Williams, the director of the Public Works Department, and the assistant to the city manager. This group collectively interviewed candidates for vacant maintenance worker positions. After the interviews were finished, the group made a

recommendation to the city manager concerning who to hire. The city manager then made the final decision concerning who to hire. The record does not indicate how many times Shucart sat on these interview panels, nor does it indicate how the interview panels reached their decision on the recommended candidate. Shucart has not sat on an interview panel for the last two years. Crew leader Moore once recommended that a seasonal employee be hired as a full time employee. The recommendation was not followed at that time. Later, though, the same seasonal employee was hired as a full time employee.

With regards to discipline, crew leaders are not empowered to suspend or discharge employees on their own volition and have not done so. Additionally, the record does not indicate that a crew leader has ever recommended either course of action. The City's existing personnel rules provide that a written reprimand may be given to an employee by "the supervisor" subject to the approval of "the department head". In the context of this case, Williams is not "the department head" referenced therein; that would be the director of the Public Works Department. The City interprets this rule as authorizing crew leaders to give written reprimands to the members of their crew. However, the records does not identify any instances wherein a crew leader gave a maintenance worker a written reprimand.

Employees in the Maintenance Division are paid pursuant to the City's structured pay system. In this system, positions are evaluated against eight separate factors to determine the position's pay grade. Each position is assigned points for each factor. The number of points assigned to each factor is representative of the importance of each factor to the position. The total points then translate into the appropriate pay grade. Each pay grade, in turn, incorporates steps. It takes a maximum of 13 years to reach the top of a pay grade, but it can be done in less time if a person is hired above the regular starting rate. The stock clerk/custodian is classified at Grade S-IV, where the range in annual pay (depending on step position) is from \$19,683 to

\$29,104. The maintenance worker I is classified at Grade S-VI, where the range in annual pay (depending on step position) is from \$22,601 to \$33,420. The maintenance worker II is classified at Grade S-VII, where the range in annual pay (depending on step position) is from \$23,802 to \$35,195. The mechanic is classified at Grade S-IX, where the range in annual pay (depending on step position) is from \$26,320 to \$38,919. The crew leader is classified at Grade S-X, where the range in annual pay (depending on step position) is from \$27,918 to \$41,282. Grade X is the highest pay level in the “S” pay plan. Because of their length of service with the City, both Shucart and Moore are at the top step of Grade S-X. Thus, both are currently paid \$41,282 annually. Shucart and Moore are paid more than the employees on their crews. Superintendent Williams is on the “M” (for management) pay scale rather than the “S” (for support) pay scale. His grade is M-IV, where the range in annual pay (depending on step position) is from \$37,990 to \$50,951. All employees in the “S” pay plan are eligible for overtime pay; employees in the “M” pay plan are not.

### **CONCLUSIONS OF LAW**

International Union of Operating Engineers, Local 2 petitioned to be certified as the exclusive bargaining representative for a unit of all employees of the City’s Maintenance Division excluding office clerical employees, professional employees and supervisors. At the hearing the Union clarified that it was not seeking to include seasonal employees in the proposed bargaining unit.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1994 as:

“A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.”

In this case, there is no dispute as to the appropriateness of the proposed bargaining unit. The only dispute raised by the City with the composition of the proposed bargaining unit concerns the status of the crew leaders. The City asserts they are supervisors and wants them excluded from

the bargaining unit whereas the Union seeks their inclusion in same. Our decision herein concerning whether the crew leaders are supervisors will determine whether they are included in or excluded from the bargaining unit. With this caveat, we hold that in the context of this case, a unit of Maintenance Division employees in the City of Hazelwood is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

The Missouri Public Sector Labor Law gives certain employees the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment. Although supervisors are not specifically excluded from the law's coverage, case law from this Board and the courts have carved out such an exclusion. See *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d(Mo.App. 1977) and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis*, Case No. 76-013 (SBM 1976). The rationale for the exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the crew leaders "supervise" the maintenance employees on their crew, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;



- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.<sup>1</sup>

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.<sup>2</sup>

Applying these criteria to the crew leaders at issue here, we conclude that on balance they do not meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (1). It is undisputed that the crew leaders are not empowered to hire, fire, promote or transfer employees on their volition and have not done so. That said, the crew leaders either play a role or are alleged to play a role in evaluating, hiring and disciplining employees. An analysis of their role in those areas follows.

With regard to evaluations, the crew leaders annually evaluate some members of their crew (namely those who have not reached the top of their pay range). When the crew leaders evaluate someone, they complete a preprinted evaluation form which requires them to rate the employee's performance in a variety of areas. The crew leaders complete these evaluations without receiving any input from Williams concerning how they should rate the employee. These completed evaluations then go up the ladder, so to speak, for review. First they go to Williams, who can change it (i.e. the evaluation) if he wants; from him it goes to the director of the Public Works Department, and finally to the city manager. These evaluations can ultimately affect the wages of a maintenance worker I because the crew leader recommends to Williams if that employee should be changed to a maintenance worker II. If that happens, the affected employee

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<sup>1</sup> See, for example, City of St. Louis Building Division, Case No. R 96-001 (SBM 1996).

<sup>2</sup> See, for example, Callaway County Ambulance District, Case No. R 96-032 (SBM, 1996).

would move into a higher pay grade. It is unclear from the record though how the wages of a maintenance worker II are affected by these evaluations.

With regard to hirings, the record indicates that both crew leaders have played a role in past hirings. Shucart's role was more significant than Moore's. Shucart has served on an unspecified number of interview panels over the years which subsequently recommended a finalist to the city manager. Since Shucart served on these panels, he presumably had some input concerning which candidate to recommend to be hired; however the record does not indicate what his level of input was. Moore's hiring experience is limited to a single instance where he recommended that a seasonal employee be hired for a full-time position. This past hiring experience, such as it was, has to be balanced against their more recent experience concerning same. In the last two years, five maintenance workers have been hired in the division. In these five hirings, neither crew leader played any role whatsoever. Specifically, they neither interviewed candidates nor recommended who to hire; those decisions were made solely by the city manager's office. These five hirings in the last two years demonstrate that while crew leaders once had some input into hirings, that is no longer the case. Consequently, crew leaders are not a indispensable party in the City's current hiring process.

With respect to discipline, the City's existing personnel rules provide that those disciplinary actions above a written warning (namely suspensions, demotions and discharges) are handled exclusively by the department head and the city manager. This means that anyone below the level of "department head", including even the superintendent of the Maintenance Division, is not empowered to take any of these actions. These same personnel rules also provide that a "supervisor" may issue a written reprimand "subject to the approval of the department head." The City interprets this rule as authorizing crew leaders to give written reprimands to the members of their crew (subject to the approval of the director of the Public Works Department). However, the

record does not contain any examples of same. Since it does not, the obvious inference is that neither crew leader has ever imposed a written reprimand on an employee. If they had, it would no doubt be documented in the record. This establishes that in practice, crew leaders play a very minor role in the disciplining of employees.

Attention is now turned to factor (2) above. There is no dispute that the crew leaders are in immediate charge of, and oversee, the members of their crews on a day to day basis. They also assign them work on a daily basis. However, crew leaders do not determine what work is to be performed or the priority in which it is to be done; Williams does. The work assignments which they make depend on the projects to be performed and the availability of, and the skills of, individual crew members. In our view, the assignment of work involved here is of a routine nature and does not involve more than limited independent judgment.

As to factor (3), there is no dispute that a crew leader works with and oversees a crew of at least seven maintenance workers. In our opinion, responsibility for a crew of that size does not, in and of itself, suggest supervisory status. The evidence on the second part of the third factor (i.e. the number of other persons exercising greater, similar or lesser authority with respect to the same employees) demonstrated that in the Maintenance Division there is another layer of authority over the crew leaders, namely the Maintenance Division Superintendent. Above him is the director of the Public Work Department and above him is the city manager. As a practical matter, all three can exercise greater authority over the maintenance workers than the crew leaders can. Thus, the crew leaders are at the bottom end of the City's managerial hierarchy. We believe this establishes that the crew leader's effective control over the maintenance workers is minimal and routine.

With regard to the level of pay (factor 4), the evidence shows that crew leaders are on a higher pay grade than the maintenance workers and therefore crew leaders have the potential to

earn more than the maintenance workers. Additionally, the current crew leaders are at the top of their pay grade because of their length of service with the City. Given both of the foregoing factors, the current crew leaders are paid more than any of the maintenance workers. However, due to the way all the pay grades are structured with ranges, it is possible for either a maintenance worker I or II who is at the top of their pay grade to be paid the same as or more than a crew leader who is at either the beginning or middle of their pay grade. We also think it is noteworthy that crew leaders are on the same part of the City's pay plan (i.e. the "S" or "support" section) as the employees whom the City contends crew leaders supervise, while the crew leaders' immediate supervisor (Williams) is part of the "M" (i.e. "Management") pay section.

Finally, with regard to factors (5) and (6), the record establishes that crew leaders are responsible for checking the work of the maintenance workers to ensure that the work is performed correctly. To do this, crew leaders travel from site to site examining work after it has been performed or while it is in progress. However, crew leaders spend anywhere from 20% to 100% of their in-field time, depending on various factors, performing maintenance work that is the same as that being performed by the maintenance workers on their crew. Thus, to a significant degree, crew leaders work side-by-side with the maintenance workers doing the same hands-on work, operating the same machines and equipment, using the same tools and devices. That being so, we are persuaded that the crew leaders are leadmen who oversee the field maintenance work performed in the Maintenance Division.

To summarize then, the record indicates that the crew leaders are valued senior employees in the Maintenance Division who perform a number of supervisory functions. Specifically, they are in charge of a minimum of seven employees on their crew on a daily basis, assign them tasks and monitor their work performance, and annually conduct performance evaluations for some of the employees on their crew. However, the factors just listed are not

enough to qualify them as supervisors. Overall, they do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. We therefore conclude that in this specific case, the crew leaders are not supervisors.

### **ORDER**

It is the decision of the State Board of Mediation that the two crew leaders at issue here are not supervisory employees. They are therefore included in the Maintenance Division bargaining unit. The formal description of that unit is as follows:

All employees of the City's Maintenance Division excluding seasonal employees, office clerical employees, professional employees and supervisors.

An election is ordered therein.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have International Union of Operating Engineers, Local 2 as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 6th day of May, 1997.

STATE BOARD OF MEDIATION

/s/ Francis R. Brady  
Francis R. Brady, Chairman

/s/ LeRoy Kraemer  
LeRoy Kraemer, Employee Member

/s/ Lois Vander Waerd  
Lois Vander Waerd, Employer Member

(SEAL)